

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

MINUTES OF BOARD MEETING

Thursday, September 18, 2014, 9:00 a.m. to 1:25 p.m.

California Regional Water Quality Control Board
Colorado River Basin Region
Board Room
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

CALL TO ORDER

The California Regional Water Quality Control Board, Colorado River Basin Region, was called to order by Chair Ellen Way at 9:00 a.m. on September 18, 2014, at Palm Desert, California.

PLEDGE OF ALLEGIANCE

ROLL CALL (Board Members Only)

Regional Board Members Present:

Buford Crites, Ed Muzik, Ellen Way, Nancy Wright

- Tom Davis was absent.

The Board Liaison stated that a quorum was present.

Regional Water Board Counsel: Tom Vandenberg

State Water Board Liaison: Vice-Chair Fran Spivy-Weber

Regional Board Staff Present:

Robert Perdue, Jose Angel, Soni Wells, Mary Castañeda, Mary Serra, John Carmona, Kai Dunn, Joan Stormo, Doug Wylie, Nadim Shukry-Zeywar, Liann Chavez, Jose Cortez, Francisco Costa, Herb Jackson, Theresa Kimsey, Jeong-Hee Lim, Logan Raub, Jonathan Rokke, Jennie Snyder, Carlos Angulo

Office of Enforcement Counsel and Staff Present:

Anna Kathryn Benedict, OE counsel

Others Present:

Sean McCarty, HDWD
Steve Bigley, CVWD
Sara Toyoda, City of Indio
Sarann Graham, HDWD

MINUTES

1. Minutes of June 26, 2014 Board Meeting

MOTION: Ed Muzik moved, Buford Crites seconded. Nancy Wright abstained. Motion was carried that the Minutes be adopted.

PUBLIC FORUM

2. No speakers.

CONTESTED WASTE DISCHARGE REQUIREMENTS

3. R7-2014-0007 Tentative Board Order R7-2014-0007, Waste Discharge Requirements for Salton Community Services District, Owner/Operator, Desert Shores Wastewater Treatment Plant; Desert Shores, Imperial County

Jose Cortez, Board staff, gave a brief presentation and discussed two comments received. Mr. Cortez explained that the proposed Order addresses the comments received and the complaints and concerns the Board has received about the site, including proposed requirements to deal with odor concerns (e.g., dissolved oxygen requirements for the ponds and sludge management plan for the plant) and groundwater monitoring to deal with allegations about wastewater surfacing. Mr. Angel suggested that the Board include an additional provision in the proposed Order requiring the Discharger provide a technical report addressing on-site storm water runoff.

MOTION: Buford Crites moved that the proposed Order with the additional provision recommended by Mr. Angel regarding storm water management be adopted. Nancy Wright seconded that the motion carry with the additional language agreed upon, and the motion carried unanimously Order No. R7-2014-0007 be adopted as amended.

UNCONTESTED WASTE DISCHARGE REQUIREMENTS

4. R7-2014-0053 Waste Discharge Requirements for the Hi-Grade Materials Company, Sand and Gravel Plant, Washwater Infiltration/Evaporation Basin Disposal Facilities, Twentynine Palms, San Bernardino County

MOTION: Nancy Wright moved, Ed Muzik seconded, and motion carried unanimously Order No. R7-2014-0053 be adopted.

5. R7-2014-0054 Waste Discharge Requirements for the Imperial Wells Power I LLC, Imperial Wells Geothermal Exploration Project, west-southwest of Niland, Imperial County

MOTION: Nancy Wright moved, Ed Muzik seconded, and motion carried unanimously Order No. R7-2014-0054 be adopted.

6. R7-2014-0055 Waste Discharge Requirements for Coachella Sanitary District, Owner/Operator, Industrial Wastewater Collection and Disposal System – Coachella, Riverside County

MOTION: Nancy Wright moved, Ed Muzik seconded, and motion carried unanimously Order No. R7-2014-0055 be adopted.

RESOLUTION

7. R7-2014-0056 Jeff Hays Resolution of Appreciation

Moved to November 13, 2014 Board Meeting, when Mr. Hays will be available to attend.

RESCISSION OF WASTE DISCHARGE REQUIREMENTS

8. R7-2014-0057 Magazine Road Landfill (IR Site 1) U.S. Navy, Naval Air Facility, El Centro

Moved to November 13, 2014, Board Meeting upon request of Discharger.

OTHER BUSINESS

9. Staff Accomplishment Awards – REP

Awards for Sustained Superior Accomplishment were awarded to Jeong-Hee Lim, Logan Raub, and Francisco Costa.

10. Informational Update: State Water Resources Control Board Activities — FSW/TV

SWRCB Vice Chair Fran Spivy-Weber indicated that the State Water Resources Control Board (State Water Board) will be looking into how its new groundwater regulations will mesh with Regional Board Basin Plans and the water quality work the Boards perform. Also, the State Water Board will be evaluating to what extent permits issued need to consider impacts on groundwater quantity. She added that the Governor's recently signed legislation calls for local jurisdictions, with the default being the counties, to develop groundwater management plans for their groundwater basins. Ms. Spivy-Weber also talked about the successful completion of the merger of the Drinking Water Program (DWP) into the State Water Board's programs on July 1, and encouraged the Regional Board to invite the DWP staff to visit so that each could learn about their respective programs. She added that one of the issues she has learned about from DWP staff is how to properly regulate small drinking water systems since the law regulates only those systems that serve 15 or more hook-ups, but even systems serving 15-100 hookups have turned out to be difficult to regulate to ensure drinking water meets standards. Ms. Spivy-Weber mentioned a funding fair on September 25th, that a new funding program for schools and stormwater will be discussed at the fair, and that certain existing monies have already been made available that southern California school districts can apply for. She noted that permit fees will be increasing, except for agriculture this time, and that the fees must be rationally based on the cost of the services the SWRCB and Regional Board provide. She said that the Water Boards are almost 100 percent funded by fees. She concluded by mentioning the upcoming Water Quality Coordinating Committee annual meeting at CalEPA, and noted that it will focus

on groundwater regulation and integrating storm water programs better into Regional Board programs by working with supply agencies and others.

11. Enforcement Procedures under the California Water Code – Assistant Chief Counsel Lori Okun

Lori Okun gave a presentation to the Board about the roles and responsibilities of the Board and the prosecutors and advisors in Board enforcement matters. She recapped separation of functions principles, Board roles and responsibilities as including setting enforcement priorities on a programmatic, rather than a facility-specific, level, and the value of having post-enforcement “lessons learned” sessions with Board members and team members. Another major role/responsibility of the Board is to determine whether to issue the requested enforcement order, which might require taking into consideration factual and procedural disputes. She mentioned that some Regional Boards have delegated to their Executive Officers the authority to issue orders, approve Supplemental Environmental Projects, etc., but have imposed monetary caps and other restrictions on those delegations. Ms. Okun then described the role of the Prosecution Team as including issuing the complaint and being the advocate for a particular enforcement result. Consequently, she explained that the Prosecution Team has no responsibility for advising the Board, particularly since the Prosecution Team’s client is the enforcement staff and not the Board. She also noted that the Prosecution Team is a party and thus, has the same procedural rights as all other parties in the enforcement proceeding, such as dischargers and other designated parties. Finally, she explained that the role of the Advisory Team is to advise the Board by providing neutral advice on legal, factual, policy, procedural issues. She added, however, that being neutral does not mean being silent; rather, it means to make recommendations on how the Board can proceed but not to advocate for a particular result. She noted that the Advisory Team can also brief a few Board members at a time (to comply with the Open Meeting Act requirements), which is helpful if the matter is particularly controversial or complex. With respect to proposed settlements, Ms. Okun explained that the Board’s role is to approve or reject the parties’ agreement, which is presented to the Board as a proposed stipulated order. She added that the Board’s role with proposed stipulated orders is to decide whether it seems appropriate to approve, but not to weigh the evidence, which would be appropriate to do only in a contested enforcement matter where the parties present their evidence for the Board’s consideration. She noted that if the Board did not feel that it had enough information to decide whether to approve the settlement, it could request the parties to give a presentation, submit more information, or ask for other things that would help the Board decide the matter. And if the Board felt the settlement was inappropriate, it could request the parties to resume negotiations, or make changes to the settlement (e.g., change the Supplemental Environmental Project or adjust the settlement amount). And if further settlement negotiations fall through, she said that the Board could reject the settlement and set the matter for a contested hearing at a later date. She also noted that the Board can deliberate in closed session on contested matters to consider the evidence received, but cannot do so for proposed settlements since no evidence is presented.

12. Region 7 Performance Report for SFY 2013-2014 – MS

Mary Serra, Supervising Water Resources Control Engineer, gave a presentation on her section’s Performance Report for Fiscal Year 2013/14. Ms. Serra’s presentation was later emailed to the Board Members for their review.

13. Update on Discharge Prohibition for Septic Systems in Yucca Valley – JR

Jon Rokke, Water Resources Control Engineer, presented an update on the Basin Plan Discharge Prohibition for Septic Systems in Yucca Valley focusing on: (1) the Hi-Desert Water District's proposed adjustment to the Phases of the Prohibition; and (2) a potential revision to clarify the Prohibition, and to adjust the Prohibition's Phase boundaries and deadlines to accommodate the District's proposal.

Mr. Sean McCarty, Senior Engineer at Atkins Engineering and production manager for the design of the sewage collection system for the District, spoke on the technical and economic rationale for the District's revised boundaries. He mentioned that Atkins' design indicates Phase 1 actually would need 94 miles of pipe to service every parcel in Phase 1, as opposed to the 70 miles of pipe that the District's Sewer Master Plan had projected. Therefore, due to funding restrictions, he explained that the District is proposing: (1) not to service (i.e., setting aside) "vacant" and hard to serve parcels" in areas with a high number/density of these parcels (i.e., parcels with a low "Equivalent Dwelling Unit" (EDU) wastewater flow) due to the significant cost they would add to the overall cost of the project; and (2) to move the western portion of the project that is currently in Phase 1 of the Basin Plan Prohibition to Phases 2 and 3.

Mr. Rokke then discussed the impending assessment vote and the upcoming Prohibition deadline for Phase 1. He also mentioned that the Regional Water Board will be receiving requests for Exemptions from the Prohibition.

14. Update on Waiver of Waste Discharge Requirements for Agricultural Runoff from the Imperial Valley – JLA

Mr. Angel reported to the Board that the proposed waiver for the Imperial Valley would likely be before the Board for consideration of adoption in November 2014. Chairwoman Way requested that Mr. Angel also provide a written update on the waiver.

15. Update on New River Pollution from Mexico – JLA

Update postponed. Mr. Angel indicated he would provide the update in writing to the Board members.

16. Colorado River Basin Water Board Executive Officer's Report — RP

Executive Officer Robert Perdue requested Board Members consult their calendars for a field trip to the PG&E Topock Compressor Station near Needles, adjacent to the Colorado River, in early December. The Board Liaison will finalize the arrangements.

17. Colorado River Basin Water Board Member Comments

Board Member Crites stated he is in the process of seeking reappointment by the Governor for another term on the Regional Board.

18. Colorado River Basin Water Board Chair's Report — EW

Chair Ellen Way reported that she and Vice Chair Nancy Wright had recently been confirmed by the full Senate.

CLOSED SESSION

19. At any time during the regular session, the Board may adjourn to meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee [Authority: Government Code Section 11126(a)]; to consider evidence received in an adjudicatory hearing and deliberate on a decision to be reached based on that evidence [Authority: Government Code Section 11126(c)(3)]; to discuss significant exposure to litigation [Authority: Government Code Section 11126(e)(2)(B)(i)]; to discuss whether to initiate litigation [Authority: Government Code Section 11126(e)(2)(C)(i)]; or to discuss initiated litigation [Authority: Government Code Section 11126(e)]. Discussion of litigation is within the attorney-client privilege and may be held in closed session [Authority: Government Code Section 11126(e)(2)].

a. EXECUTIVE OFFICER PERFORMANCE EVALUATION

The Board adjourned to go into Closed Session from 11:08 a.m. to 12:07 p.m. to evaluate the performance of its Executive Officer.

ADJOURNMENT OF BOARD MEETING 1:35 p.m.